

The 21st October, 1994

No. 14/13/87-6 Lab./699. -In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala, in respect of the dispute between the workman and management of M/s. The Indian Sugar General Eng. Corporation, Yamuna Nagar versus Gulshan Kumar.

IN THE COURT OF SHRI S. R. BANSAL, (ADDITIONAL DISTRICT SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 279 of 1988

WORKMAN SHRI GULSHAN KUMAR, SON OF LATE SHRI TILAK RAJ, HOUSE NO. 6, JAWAHAR NAGAR, JAGADHRI WORKSHOP, DISTRICT AMBALA AND THE MANAGEMENT OF THE INDIAN SUGAR AND GENERAL ENGINEERING CORPORATION, YAMUNA NAGAR

Present:

WR. Shri P. K. Juneja.

MR. Shri V. K. Gupta.

AWARD

In exercise of the powers conferred by clause (C) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between workman Shri Gulshan Kumar and the management The Indian Sugar and General Engineering Corporation, Yamuna Nagar to this court for adjudication,—vide Haryana Government notification No. 27695—701, dated 2nd June, 1988:—

"Whether the services of Shri Gulshan Kumar has been terminated or he himself abandoned the job by forfeited his lien to service by absence?" If so to what relief is he entitled?" -

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and filed the claim statement. The management has also filed written statement to the claim statement.

The applicant submitted replication controverting allegations of the written statement filed and reiterated those made in the claim statement. On the pleadings of the parties the following issues were framed:—

- (1) Whether the services of the workman were terminated or he forfeited his lien to service by absence ? OPW.
- (2) If issue No. 1, disposed of in favour of the workman, whether the impugned termination of services of workman is invalid ? OPW.
- (3) Whether the reference is not competent as alleged in preliminary objection No. 1 (A & B) of WS ? OPM.
- (4) Relief.

Parties led their evidence. I have heard the representatives of the parties. My issue-wise findings are as under:—

Issue No. 1:

The workman examined himself as WW-1 and closed the evidence. The respondent-management did not lead any evidence. In his deposition the workman had deposed that he was appointed as fitter with the respondent-management in May, 1986, and immediately after his employment he met with an accident on 9th August, 1986, while working in the factory. He has been under treatment in the P.G.I., but his left arm had to be amputated. According to him, he was given fitness certificate by PGI in October, 1987 and thereafter he approached the management for some alternative appointment on the post of peon or workshop attendant. He also cited certain examples with a view to show that certain other person similarly situated had been offered alternative appointment by the management. In the written statement the respondent-management however maintained that the workman was employed in the factory as a fitter and since on account of the accident, he became incapacitated to discharge the duties of the fitter for which he was employed, there was no question of his joining the service of the factory as a fitter. It was also mentioned that because of amputation of left arm, the workman was not physically fit to perform the duty. According to them such a termination as a result of continued ill-health is excluded from the term retrenchment attracting the provisions of Industrial Dispute Act, 1947. The workman in his cross-examination had however, admitted that

since the day of his accident, he has been getting pension from the E.S.I. as per provisions of law. As rightly stressed by the respondent-management in their written statement, the services of the workman have not been terminated by the management, but he has been forced by the circumstances to abandon the job because of his incapacitation. With the amputation of left arm, the workman can certainly not discharge the function of fitter, which is highly skilled job and need performance with both hands. The workman cannot claim as a matter of right he should be offered some alternative job by the management. Apparently, this is sheer will of the management to accede such a request of the workman. He has certainly no legal right in this regard. The workman is entitled to disability pension under the law, which he has already admitted that he has getting the same from the E.S.I. Corporation. In the situation this issue is decided in favour of the management and against the workman.

Issue No. 2:

In view of the finding on issue No. 1, this issue does not call for any finding.

Issue No. 3:

In view of the finding issue No. 1, the reference of the appropriate government is apparently not competent as rightly alleged in the preliminary objection by the respondent-management.

Relief:

In view of the findings on the issues above, the workman is not entitled to any relief.

The reference stands answered accordingly.

An intimation be sent to all the quarter concerned.

S. R. BANSAL,

The 23rd August, 1994.

Addl. District & Session Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1568, dated 21st September, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. District & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

The 28th September, 1994

No. 14/13/87-6Lab./692. -In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. Secretary, H.S.E.B., Panchkula, *versus* Kashmiri Lal.

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTRICT AND SESSIONS JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 98 of 1988

SHRI KASHMIRI LAL, SON OF SHRI SADHU RAM, C/O SHRI JANAK RAJ SHARMA, ADVOCATE, COURT ROAD, AMBALA CITY AND THE MANAGEMENT OF THE SECRETARY, HARYANA STATE ELECTRICITY BOARD, SECTOR-6, PANCHKULA, (ii) EXECUTIVE ENGINEER, HARYANA STATE ELECTRICITY BOARD (OPP. DIVISION), AMBALA CANTT.

Present:

WR. Shri J. R. Sharma.

MR. Shri S. M. Singh.

AWARD

In exercise of the powers conferred by clause (C) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Kashmiri Lal and the management of the Secretary, Haryana State Electricity Board, Sector 6, Panchkula. (ii) The Executive Engineer, Haryana State Electricity Board (OP. Division), Ambala City to this court for adjudication, -vide Haryana Government notification bearing No. 11845-50, dated 24th July, 1988: -

"Whether the termination/retranchment of services of Shri Kashmiri Lal is valid and justified ?
If not so, to what relief is he entitled ?"

The workman raised an industrial dispute by serving a demand notice, dated 6th February, 1988 upon the management. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made the above mentioned reference to this Court.

The plea of the workman is that he joined the services of the management as daily rated worker on 5th December, 1980 and his services were abruptly terminated with effect from 23rd April, 1984 without any notice or payment of retrenchment compensation in violation of section 25 (F) of the Act. He demanded his reinstatement with continuity of service and back period wages.

On the other hand, the management pleaded that the workman was retrenched due to paucity of work after serving one month retrenchment notice dated 23rd April, 1984. Workman was offered retrenchment compensation at the time of retrenchment and necessary intimation on form-P was sent to the Labour Commissioner, Haryana, Chandigarh. In any case the claim having been raised after more than the period of four year is barred due to delay and laches.

The workman submitted his replication controverting the allegations of the management in the written statement filed. On the rival contentions of the parties following issues were framed for decision:—

- (1) Whether the impugned termination is invalid ? OPW.
- (2) Whether the reference is not maintainable ? OPM.
- (3) Relief.

I have heard the Ld. representatives of the parties. My issue-wise findings are as under:—

Issue No. 1:

The workman Kasmiri Lal appeared as WW-1 and broadly supported all the allegations made by him in his demand notice. In rebuttal the management produced MW-1 Shri Rajinder Gupta, LDC who stated that the services of the workman were retrenched after giving him retrenchment notice and compensation. Management also produced Ex. M-1 to Ex. M-3. The perusal of Ex. M-1 shows that the notice of retrenchment was given on 23rd April, 1984 with effect from 25th May, 1984. It was pleaded in the notice that the services of the workman will stand termination with effect from 25th May, 1984. Ex. M-2 is the photo copy of Form-P sent by the management to the Secretary, Government of Haryana, Labour Department, Chandigarh. Ex. M-3 is the photo copy of the money order receipt shows that a sum of Rs. 810/- was sent to the workman. Ex. M-4 shows that on as many 40 daily rated workers were retrenched. The name of the workman appears at Sr. No. 3 on this list. MW-1 categorically stated that the workman received retrenchment compensation. There is, thus, full compliance of provisions of law as contained in section 25(F) of the Act and the termination in, thus, held to be legal and valid. The finding on this issue, i.e. therefore, returned in favour of the management and against the workman.

Issue No. 2:

The services of the workman were terminated with effect from 24th May, 1984. The demand notice was served by him on 6th February, 1988 after a period of about four years. Although no period of limitation is prescribed yet having regards of the facts and circumstances of this case the delay of about four years is bad and claim submitted by the workman is barred on account of delay and laches.

Relief:

In the end, the workman is held not entitled to any relief.

The reference shall stand answered accordingly.

The 28th July, 1994.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1353, dated Ambala City the 11th August, 1994.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

No. 14/13/87-6Lab./604—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Ambala Coop. Bank Ltd. Ambala City *versus* Ramesh Chander.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGE). PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 343 of 1988

WORKMAN, RAMESH CHANDER, S/O SHRI PIARE LAL, VILLAGE KAUNLA, P.O. MODEL TOWN, AMBALA CITY.

and

THE MANAGEMENT OF THE AMBALA CO-OPERATIVE BANK LTD., AMBALA CITY.

Present :

WR, Shri Jasmar Chand.

MR, Shri Gian Garewal.

AWARD

In exercise of the powers conferred by clause (C) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the Act), the Governor of Haryana referred the following dispute between the workman Shri Ramesh Chander and the Ambala Central Co-operative Bank Ltd., Ambala City to this court for adjudication,— *vide* Haryana Government notification bearing No. 7347—51, dated the 22nd February, 1988:—

Whether the termination of services of Shri Ramesh Chander is valid and justified? If not so, to what relief is he entitled?

The workman raised an industrial dispute by serving a demand notice dated 29th October, 1987. The Conciliation proceedings were taken up by the Labour Officer-cum Conciliation Officer. The same having failed, the appropriate Government made the above mentioned reference to this court.

On receipt, of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as claim statement. The stand of the workman in the demand notice is that he was appointed as Chowkidar with the management on 23rd May, 1981 and his services were terminated on 25th April, 1984 without serving any charge sheet, holding of enquiry, issuance of prior notice and payment of retrenchment compensation. He also alleged that principle of last come first go was not observed. It was alleged that the workman had rendered more than 240 days of continuous service in a period preceding 12 months of his termination. The workman, therefore, demanded his reinstatement with continuity of service and back wages.

The management appeared and resisted the claim of the workman. Although it was admitted that the workman was appointed on 20th May, 1981 but it was pleaded that the workman was discharged from the service on 21st April, 1984. The plea raised is that the workman was appointed purely on daily wage, and the appointment letter was issued to him and it was stated therein that his appointment was only for a specific period and his services can be terminated at any time on the expiry of stipulated period. It was also pleaded that the Labour Court has no jurisdiction to try the present claim which in any case is time barred having been raised after a period of more than three years.

The workman submitted the replication controverting the allegations of the management in the written statement filed and reiterated those made in the demand notice/claim statement.

On the rival contentions of the parties following points in issue were laid down by Shri S.D. Anand the then Presiding Officer, Labour Court,— vide order dated 31st August, 1989 :—

- (1) Whether the impugned termination of services of the workman is invalid ? OPW
- (2) Whether the provisions of Industrial Disputes Act do not apply, as alleged in preliminary objection No. 1 of the WS ? OPM
- (3) Whether this court has no jurisdiction to try the present reference as alleged in preliminary objections Nos. 2 and 3 of the WS ? OPM
- (4) Relief.

The parties have led evidence by way of affidavits. Workman submitted his affidavit Ex-W-1 and counter affidavit Ex-W-2. Management submitted only affidavit Ex-M-2 of the Managing Director of the Bank. No counter affidavit was filed.

I have heard the learned representatives of the parties. My issue wise findings are as under :—

Issue No. 1 :

It is not disputed before me that the workman has rendered more than 240 days of service continuously in a period preceding twelve months of his termination. It is also not disputed that no charge sheet was served nor any prior notice or pay in lieu of such notice was given. Similarly no retrenchment compensation was paid. The only short question raised is that the workman has raised the dispute after a period of more than three years and that he has not entitled to wages for the back period. No doubt the dispute has been raised after a period of about three years yet fact remains that the affidavit Ex W 1 filed by the workman shows that he remained unemployed after the termination of his services. No counter affidavit has been filed to show that the workman remained employed after losing his job. The workman will, therefore, be held entitled to 50% of the wages from the date of demand notice dated 29th October, 1987. I therefore hold that the workman is entitled to reinstatement with continuity of service and back period wages to the extent of 50%. The finding on this issue is, therefore, returned in favour of the workman and against, the management.

Issue Nos. 2 and 3 :

The onus to these issues was on the management. These issues have not been argued. However, the representative of the management argued that the dispute has been raised after a period of about three years and therefore the claim should be rejected. No doubt the dispute has been raised after a period of about three years but no limitation period is prescribed for raising the dispute in the Industrial Disputes Act, which in any case is a code in itself. Moreover the claim of the workman to the extent of 50% back wages has already been disallowed on account of delay in raising the dispute. His claim however cannot be thrown out merely on the ground of delay. The findings on these issues are, therefore, returned in favour of the workman and against the management.

Relief :

In the end, the workman is held entitled to reinstatement with continuity of service and back period wages to the extent of 50% from the date of demand notice. It is however made clear that this award will not in any case render in regularising the services of the workman which the management shall be competent to do on the basis of the rules applicable to the workman on the subject.

The reference shall stand answered, accordingly.

The 17th August, 1994.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1479, dated Ambala City the 6th September, 1994.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court,
Ambala.